IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/09/2002

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION NO.6523 OF 2002

Petroleum Employees Union,
rep.by its General Secretary
(Regn.No.30/MDS),
C/o.Bharat Petroleum Corporation Limited,
No.1, Ranganathan Gardens,
Anna Nagar West, Chennai-40. ... Petitioner

-Vs-

1.Bharath Petroleum Corporation Limited,
rep.by its Dy.General Manager (HRS),
No.1, Ranganathan Gardens,
Anna Nagar West, Chennai-40.

2.Regional Labour Commissioner (Central),
V Floor, Shastri Bhawan,
26, Haddows Road, Chennai-600 006.

3.Union of India,
Ministry of Labour,
Shramsakthi Bhawan,
Rafi Marg,
New Delhi-110 001. ... Respondents

Petroleum Employees Association,
(Regn.No.375/77)
rep.by its General Secretary,
C/o.Bharat Petrleum Corporation Ltd.,
Trumpanam,
Kerala ... Intervener

(Intervener is brought on record
as per the order of the Court
dated 25.6.2002 made in
W.P.M.P.No.31408 of 2002)

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Declaration as stated therein.

!For petitioner : Mr.N.G.R.Prasad for
Ms.Vaigai for
M/s.Row & Reddy

^For Respondent No.1 : Mr.Mr.Altaf Ahamed (SC)
Additional Solicitor General
of India for
Mr.Ranganatha Reddy for
M/s.King and Patridge

For Intervener : Mrs.Sudha Ramalingam

:O R D E R
The above Writ Petition has been filed praying to issue a Writ of Declaration that the action of the first respondent in unilaterally altering the service conditions viz. the percentage rates for calculating the lease rent under the Self Lease Scheme after the settlement dated 11.9.2001 based on their circular dated 14.12.2001 bearing ref. No.HRS.SL.CON., is illegal and unconstitutional and consequently direct the first respondent not to alter the service conditions except in accordance with the provisions of the I.D.Act, 1947.

2. On a perusal of the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that the first respondent Corporation has revised the rentals of its employees in spite of there having already been a Self Lease Scheme (hereinafter referred as to as SLS) extended to the workmen in the year 1995 since according to the management, the revised rentals are beneficial to its employees of all categories; that as per the SLS extended in the year 1995, the workmen owning and occupying a house/flat and desirous of availing Self Lease benefits could enter into a lease agreement with the Corporation thereby stipulating the amount of rent payable to the lessors for a period of ten years which is subject to periodic review and Standard Rent Recovery (SRR for short) by management and as a measure of revision of the lease rent effective from 1.6.1998, the Management would say that the revised rentals and SRR would also be applicable to new leases entered thereafter under the SLS, furnishing the table of revised rentals under different categories classifying the cities into Metropolitan, `A' Class, `B-1' class, `B-2' Class, ` C' class and other stations adopting the different standards of rentals to each of these categories further noting that the notional maximum will be as per Annexure-III of the Long Term Settlement valid for the period from 1.6.1995 to 31.6.1998. The Management would further announce that there would not be any revision in the maintenance charges currently being paid to the lessors further reserving its right to revise the rental ceilings, SRR and other aspects of the Scheme from time to time and conditions of SLS would remain unchanged; that these revised rentals have been announced by the respondent Management in the circular issued to all workmen dated 14.12.2001 which has given the cause of action for the petitioner Union to challenge the same by means of the above writ petition on grounds such as (i)that the action of the respondent in unilaterally altering the service conditions viz. the percentage rates for calculating the lease rent under the SLS after the

settlement dated 11.9.2001 is illegal and unconstitutional; (ii)that the bilateral settlement entered into in between the Management and the Union dated 11.9.2001 under Section 12(3) of the Industrial Disputes Act is to operate for a period of ten years from 1.6.1998 and having entered into the said settlement, the Management has unilaterally come forward to reduce the ceiling mentioned in the SLS of the year 1995; (iii)that the Management having nowhere in the settlement mentioned about reduction of percentage, it is bound to continue the existing percentage (as of 1995) till such time that it is substituted by another settlement or an Award; (iv) that the Circular dated 14.12.2001 is not only repugnant to settlement dated 11.9.2001 signed under Section 12(3) of the Act with all the Unions all over India but also opposed to Section 9-A of the Act under which no unilateral violation of conditions is permissible; (v)that in other Government undertaking corporations such as Indian Oil Corporation, M/s. Hindustan Petroleum corporation and Oil and Natural Gas Commission, the same percentage, as it had been earlier, is in vogue and hence a strike notice was issued and a conciliation proceeding was also held before the Assistant Labour Commissioner concerned wherein the Management reported its stand and insisted enforcing the altered rates and hence the above writ petition praying for the relief extracted supra.

3. On the part of the Management, their case is that there had been a number of welfare measures introduced by the Corporation from time to time which are also reviewed every now and then in the interest of the Organisation and the employees; that the SLS is one such welfare Scheme introduced by the Management in 1995 on its own as a welfare measure and was not by any statute or contractual obligation or bipartite or tripartite settlement and it is neither mandatory nor compulsory but purely optional availed only by those employees who opted for the Scheme, according to which the employee owns and resides in the house, enters into an individual agreement with the Corporation and would become the lessor of the Corporation on individual lease deed - the rental to be paid by the Corporation to the lessor employee- for a minimum period of ten yeas terminable with the notice of three months by either side with the right of review of the rental ceiling by the Management, the relationship being lessor and lessee; that availing the scheme is optional and hence it cannot be considered to be a condition of service; that pursuant to the steep increase in the HRA, the Corporation on its own enhanced the lease rent applicable to the Management staff giving three options; that it is not in dispute that while HRA is reckoned as a component of wage for the purpose of calculating the overtime wages, the lease rental is not treated so, but on the contrary it is classified as `income from house property'; that hundreds of employees have given notice of termination of their lease deeds which have been done since the Scheme being optional.

4. Further ascertaining that the relationship in between the Management and the concerned individual is that of a lessor and lessee and such agreement of lease is under the Transfer of Property Act and hence it is evident that the SLS is not a condition of service so as to give effect to Section 9-A of the Industrial Disputes Act, 1947. The Management would further point out that on the failure report of the conciliation proceeding, the Government of India should allow the process of redressal under the Industrial Disputes Act prior to agitating the same before the High Court;

that the minutes of conciliation proceedings are matters of records and there is no violation of any legal provisions much less Section 33 of the Act. On such grounds, the first respondent Corporation would pray to dismiss the above writ petition.

5. During arguments, the learned counsel appearing on behalf of the petitioner, Union besides narrating the factual position of the case, as it has been traced in the above writ petition, would also recapitulate stating that the employees of the Corporation are entitled to SLS; that in the year 1995, the said Scheme was introduced, which is sought to be reduced by Circular dated 14.12.2001 issuing statutory notice thereby reducing the rate of rent of the employees unilaterally. At this juncture, the learned counsel for the petitioner would refer to the judgment of the Division Bench of this Court dated 17.4.2 002 made in W.A.No.1053 of 2002, which on perusal of the records comes to be seen as has been preferred by the Management against the order of the learned single Judge of this Court dated 9.4.2002 made in W.P.M.P.No.9001 of 2002 and W.V.M.P.No.333 of 2002 wherein the learned single Judge has made absolute the interim injunction ordered for a period of eight weeks by order dated 28.2.2002 further making it known that the said order was applicable only to the members of the petitioner Union therein, posting the writ petition for final hearing on 10 .6.l2002. On appeal by the Management, the Honourable Division Bench remarking that the questions raised therein have got to be adjudicated in the main writ petition further refraining to make any observation or enter into the merit of the case and declining to interfere with the interim order passed by the learned single Judge, dismissed the writ appeal itself.

6. Resuming the arguments, the learned counsel would further point out that the Management unilaterally put-up a circular dated 14.12.20 01 in the notice Board making it known to all the workmen the terms of settlement therein which are not bilateral and hence they issued the strike notice, in spite of which the Management did not come forward to modify the Circular. Citing the Circular issued by the Indian Oil Corporation, Southern Region, Madras and that of the Oil and Natural Gas Commission, the learned counsel would point out that the position of the Hindustan Petroleum Limited is entirely different and would exhort that they cannot undo unilaterally what has been bilaterally agreed.

7. The learned counsel, referring to Section 9-A of the Industrial Disputes Act, would cite a judgment of the Honourable Apex Court delivered in LIFE INSURANCE CORPORATION OF INDIA VS. D.J.BAHADUR AND OTHERS reported in 1981(I)LLJ 1 = (1981) 1 SCC 31 wherein it has been held:

"The award or settlement, under the I.D.Act, replaces the earlier contract of service and is given plenary effect as between the parties. It is not a case of earlier contract being kept under suspended animation, but suffering supersession. Once the earlier contract is extinguished and fresh conditions of service are created by the award or the settlement, the inevitable consequence is that even though the period of operation and the span of binding force expires, on the notice to terminate the contract being given, the said contract continues to govern the relations between the parties until

a new agreement by way of settlement or statutory contract by the force of an award takes its place. If notice had not been given the door for raising an industrial dispute and fresh conditions of service would not have been legally open with action under Ss.9A, 19(2) or (6) the door is ajar for disputes being raised and resolved. This, in short is the legal effect, not the lethal effect of invitation to industrial trial of strength with no contract of service or reversion to an obsolete and long ago "dead" contract of service."

8. The learned counsel would also cite yet another judgment delivered by the Apex Court in THE MANAGEMENT OF INDIAN OIL CORPORATION LTD. vs. ITS WORKMEN reported in (1976) 1 SCC 63 wherein a Larger Bench of the Honourable Apex Court has held:

"The grant of compensatory allowance was undoubtedly an implied condition of service so as to attract the mandatory provisions of Section 9A. Section 9A comes into operation the moment the employer proposes to change any conditions of service applicable to any workmen, and once this is done twenty one days' notice has to be given tot he workmen. This admittedly was not done in this case. By withdrawing the Assam Compensatory Allowance the employers undoubtedly effected substantial change in the conditions of service, because the workmen were deprived of the compensatory allowance for all times to come."

9. The next judgment cited by the learned counsel for the petitioner is also delivered by the Honourable Apex Court in BARAUNI REFINERIES PRAGATISHEEL SHRAMIK PARISHAD vs. INDIAN OIL CORPORATION LTD. & OTHERS reported in 1991-I-LLJ 46 wherein it has been held:

"A settlement arrived at in the course of conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contract. The object obviously is to uphold the sanctity of settlement reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement. There is an underlying assumption that a settlement reached with the help of the conciliation office must be fair and reasonable and can, therefore, safely be made binding not only on the workmen belonging to the Union signing the settlement but also on others. That is why settlement arrived at in the course of conciliation proceedings is put on par with an award made by an adjudicatory authority."

10. The learned counsel for the petitioner would then focus his attention on Section 33 of the Industrial Disputes Act which rules that `the conditions of service etc. are to remain unchanged' under certain circumstances during pendency of any conciliation proceeding and would cite a judgment of the Honourable Apex Court delivered in M/S. NORTH BROOK JUTE CO.LTD. AND ANOTHER vs. THEIR WORKMEN reported in A.I. R.1960 Supreme Court 879 wherein the Honourable Apex Court, bringing out the sum and substance of Sections 33 and 9-A of the Industrial Disputes Act, 1947, would observe:

"... in making this provision (Section 9) for notice, Legislature was clearly contemplating three stages. The first stage is the proposal by the employer to effect a change; the next stage is when he gives a notice and the last stage is when he effects the change in the conditions of service on the expiry of days from the date of the notice. The conditions of service do not stand changed, either when the proposal is made or the notice is given but only when the change is actually effected. That actual change takes place when the new conditions of service are actually introduced."

"It necessarily follows that in deciding for the purpose of S.33 of the Act, at what point of time the employer "alters" any conditions of service, we have to ascertain the time when the change of which notice under S.9A is given is actually effected. If at the time the change is effected, a proceeding is pending before a Tribunal, S.33 is attracted and not otherwise. The point of time when the employer proposes to change the conditions of service and the point of time when the notice is given are equally irrelevant."

11. The learned counsel for the petitioner would also cite the judgment of the Apex Court delivered in JAIPUR ZILA SAHAKARI BHOMI VIKAS BANK LTD. vs. RAM GOPAL SHARMA AND OTHERS reported in (2002) 2 SCC 24 4 wherein the Honourable Apex Court has held:

"The proviso to Section 33(2)(b), s can be seen from its very unambiguous and clear language, is mandatory. This apart, from the object of Section 33 and in the context of the proviso to Section 33(2)(b), it is obvious that the conditions contained in the said proviso are to be essentially complied with. Further, any employer who contravenes the provisions of Section 33 invites a punishment under Section 31(1) with imprisonment for a term which may extend to six months or with fine which may extend to Rs.1000/= or with both. This penal provision is again a pointer of the mandatory nature of the proviso to comply with the conditions stated therein. To put it in another way, the said conditions being mandatory, are to be satisfied if an order of discharge or dismissal passed under Section 33(2)(b) is to be operative. If an employer desires to take benefit of the said provision for passing an order of discharge or dismissal of an employee, he has also to take the burden of discharging the statutory obligation placed on him in the said proviso. Taking a contrary view that an order of discharge or dismissal passed by an employer in contravention of the mandatory conditions contained in the proviso does not render such an order inoperative or void, defeats the very purpose of the proviso and it becomes meaningless. It is well settled rule of interpretation that no part of statute shall be construed as unnecessary or superflous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say that the order of discharge or dismissal made in contravention of Section 33(2)(b) is not void or inoperative. He cannot be permitted to take advantage of his own wrong. The interpretation of statute must be such that it should advance he legislative intent and serve the purpose for which it is made rather than to frustrate it. The proviso to Section 33(2)(b) affords protection to a workman to safeguard his interest and it is a shield against victimization and unfair labour practice by the employer during the pendency of industrial dispute when

the relationship between them is already strained. An employer cannot be permitted to use the provision of Section 33(2)(b) to ease out a workman without complying with the conditions contained in the said proviso for any alleged misconduct said to be unconnected with the already pending industrial dispute. The protection afforded to a workman under the said provision cannot be taken away. If it is to be held that an order of discharge or dismissal passed by the employer without complying with the requirements of the said proviso is not void or inoperative, the employer may with impunity discharge or dismiss a workman."

"Section 31 speaks of penalty in respect of the offences stated therein. This provision is not intended to give any remedy to an aggrieved employee. It is only to punish the offender. The argument that Section 31 provides a remedy to an employee for contravention of Section 33 is unacceptable. Merely because penal provision is available or a workman has a further remedy under Section 33-A to challenge the approval granted, it cannot be said that the order of discharge or dismissal does not become inoperative or invalid unless set aside under Section 33-A. There is nothing in Sections 31, 33 and 33-A to suggest otherwise even reading them together in the context. These sections are intended to serve different purposes."

12. The learned counsel for the petitioner would ultimately rely on yet another judgment of the Honourable Apex Court delivered in THE EMPLOYEES OF TANNERY AND FOOTWEAR CORPORATION OF INDIA LTD. AND ANOTHER vs. UNION OF INDIA AND OTHERS reported in 1991 Supp.(2)SCC 565. This is a case wherein the employees of the petitioner Corporation pointed out that though the petitioner Corporation and the Cotton Corporation of India stand on the same footing, they have been denied parity in some of the grades of the petitioner Corporation with the grades in the Cotton Corporation of India, on ground of Equal Pay for equal work, and the petitioner Corporation urged that themselves and Cotton Corporation of India are distinct legal entities carrying on different trading activities and the petitioners cannot claim parity in pay scales with the employees in the Cotton Corporation of India and that the principle of equal pay for equal work cannot be invoked. In such circumstances, the Honourable Apex Court has observed:

"It is no doubt true that the respondent Corporation and the Cotton Corporation of India are distinct legal entities. But at the same time it cannot be ignored that both are instrumentalities of the Government of India who is bound by the directives contained in Part IV of the Constitution."

Citing the above judgments, the learned counsel for the petitioner would submit that though the SLS is in vogue in other Government Undertaking Corporations, such as Indian Oil Corporation and ONGC, the respondents have disrupted the same so far as their employees are concerned and thus the employees of the respondents are discriminated as against the employees of the Indian Oil Corporation and ONGC and would pray for the relief extracted supra.

13. On the contrary, Mr.Altaf Ahmed, Additional Solicitor General of India appearing on behalf of the respondent Corporation would submit that SLS was introduced as a welfare measure in lieu of HRA ; that any

change in the amounts payable should be reasonable to the extent that there is no hostile discrimination between recipients of SLS or HRA and vice versa; that if the amounts re ceived by either of the two categories of people is hugely different, then it would amount to discrimination which would be violative of Article 14 of the Constitution; that SLS cannot be deemed to be a condition of service as the alteration of the percentage rates which are being challenged, does not figure anywhere in the Long Term Settlement on Wages; that Annexure-III of the Long Term Settlement on Wages only mentions the minimum salary for each grade and the notional maximum that would be reckoned for self lease which was included solely because the salary scales were open ended i.e. there was no maximum basic pay for any grade; that SLS was introduced as a welfare measure and is governed by a LessorLessee Agreement, the sanctity of which cannot be disputed; that Section 9-A of the Industrial Disputes Act which dwells on Notice of Change, would not be attracted in the instant case as the change is not to the detriment of any of the workmen; that when the salary scales were revised, a steep upward revision in wages and allowances was implemented; that following this, there was a steep upward revision in SLS amounts as well ranging from 89%-109%.

14. The learned Additional Solicitor General would further submit that SLS and HRA are interchangeable options for any employee; that if, for any reason, an employee finds it more attractive to switch to SLS or HRA, he/she is at liberty to do so by giving three months notice; that SLS is an All India Scheme which is available to all categories of employees right from the lowest rung employee i.e.general operative (Khalasi, whose qualification is VII class Pass) right up to the Chairman & Managing Director of the corporation; that the change in the formula from 40% to 30% was implemented in toto for all Management staff who were on Self Lease; that this change was effected in the year 1999-2000 with retrospective effect from 1.1.1997; that as regards non-management staff in other regions also, the change in the formula was questioned; that however, in Mumbai, the Unions have exercised their options in terms of the equivalent of the impugned circular dated 14.12.2001 i.e. they have accepted the revised formula of 30% whilst reserving their right to obtain 40%, pending disposal of the proceedings which are currently being heard in the Central Government Industrial Tribunal, Mumbai.

15. The learned Additional Solicitor General would further submit that pending disposal of the writ petition, by virtue of the interim order, an anomalous situation is currently prevailing in Southern Region as Members of the petitioner Union are receiving 40% of the revised notional maximum basic pay, while another Union is receiving 30% of the revised basic pay in terms of Management circular dated 14.12.20 01; that the interim order is also having adverse repercussions in other parts of the country in the Marketing Division, besides the Refinery, as only members of the petitioner Union are receiving 40% of the notional maximum of the revised basic. On such arguments, the learned Additional Solicitor General would pray to dismiss the above writ petition.

16. So far as the intervener, the Petroleum Employees Association (RegistrationNo.375/77) is concerned, their case is also the same

as that of the petitioner and they would adopt the arguments of the petitioner with no separate arguments advanced and no mention need be necessary that they sail with the petitioners.

17. On a overall consideration of the facts and circumstances encircling the whole affair concerned with the above writ petition filed by the petitioner Union and looking at the same from the context of the judgments cited, the main issues that arise for determination are:

(i)whether the SLS 1995 was a self-introduced scheme by the respondent Corporation for the welfare of its employees or had there been any compulsion or contractual obligation on the part of the Corporation in floating the Scheme so as to give way for the employees to testify the validity of the alterations effected into the same since according to the Corporation it is their firm case that in the SLS 1995 itself it has been incorporated providing for introduction of alterations in the rentals from time to time and one such alteration effected is by the circular dated 14.12.2001 which is beyond question by the employees?

(2)Whether the agreements entered into in between the Corporation and the Union or the individual employees pertaining to the SLS have any bearing on the conditions of service so as to allege on the part of the Union that the alteration effected by the impugned circular dated 14.12.2001 of the Corporation is nothing short of alteration of conditions of service, particularly from the point of view of the Corporation that the agreements are entered into in the capacity as the lessor and lessee and only the relevant provisions of the Transfer of Property Act would be attracted and it is nothing to do with the conditions of service so as to give way for the petitioner Union loiter much on ground that by the circular dated 14.12.2001, the conditions of service are altered?

18. This Court, in the above circumstances, is able to see the issues involving disputed questions of fact which normally could not be decided in a writ petition of this sort since the High Court sitting on a judicial review under Article 226 of the Constitution is not expected to go into such facts and circumstances nor could appreciate the same in evidence as a Labour Court or Tribunal and in these circumstances it is only desirable to direct the petitioner and the intervener herein to file necessary applications before the Central Government Industrial Tribunal, Mumbai to implead themselves as parties to the proceedings pending there, it having been referred to by the Bombay High Court in its Writ Petition No.441 of 2002.

In result, the petitioner and the intervener are hereby directed to file necessary applications before the Central Government Industrial Tribunal, Mumbai to implead themselves as parties to the dispute pending there between the Petroleum Employees Union and the Bharat Petroleum Corporation Limited, having been referred to by the High Court of Judicature at Bombay in Writ Petition No.441 of 2002 and the said Tribunal shall consider the same in the manner known to law and dispose of the same as expeditiously as possible.

With the above directions, the above writ petition is disposed of.

However, in the circumstances of the case, there shall be no order as to costs.

In view of the above decision made in the Writ Petition, W.P.M.P. No.9001 of 2002 gets dismissed.

Index: Yes
Internet: Yes
Rao

To
1.The Regional Labour Commissioner (Central),
V Floor, Shastri Bhawan,
26, Haddows Road, Chennai-600 006.

2.The Ministry of Labour,
Union of India,
Shramsakthi Bhawan,
Rafi Marg,
New Delhi-110 001.

3.The Central Government Industrial Tribunal,
Mumbai.

Order in W.P.No.6523 of 2002.

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